STATE OF CONNECTICUT
QUI TRANSTULIT SUSTINET

Senate

General Assembly **File No. 715**

February Session, 2016 Substitute Senate Bill No. 448

Senate, April 25, 2016

The Committee on Finance, Revenue and Bonding reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING STATE TAX POLICY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subparagraph (A) of subdivision (28) of subsection (a) of section 12-213 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2016*):

(28) (A) "Captive real estate investment trust" means, except as provided in subparagraph (B) of this subdivision, a corporation, a trust or an association (i) that is considered a real estate investment trust for the taxable year under Section 856 of the Internal Revenue Code; (ii) that is not regularly traded on an established securities market; (iii) in which more than fifty per cent of the voting power, beneficial interests or shares are owned or controlled, directly or constructively, by a single entity that is subject to Subchapter C of Chapter 1 of the Internal Revenue Code; and (iv) that is not a qualified real estate investment

trust, as defined in subdivision (3) of subsection (a) of section 12-217. Any voting power, beneficial interests or shares in a real estate investment trust that are directly owned or controlled by a segregated asset account of a life insurance company, as described in Section 817 of the Internal Revenue Code, shall not be taken into account for purposes of determining whether a real estate investment trust is a captive real estate investment trust.

Sec. 2. Subsection (b) of section 12-218 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2016*):

(b) Except as otherwise provided in this chapter, on and after January 1, 2016, the net income of the taxpayer shall be apportioned within and without the state by means of an apportionment fraction. The apportionment fraction shall represent the part of the taxpayer's gross receipts from sales or other sources during the income year, computed according to the method of accounting used in the computation of its entire net income, which is assignable to the state, and excluding any gross receipts attributable to an international banking facility as defined in section 12-217. [, but including] For the purposes of this subsection:

(1) Gross receipts from sales of tangible personal property are assignable to this state if the property is delivered or shipped to a purchaser within this state, other than a company which qualifies as a Domestic International Sales Corporation (DISC) as defined in Section 992 of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, and as to which a valid election under Subsection (b) of said Section 992 to be treated as a DISC is effective, regardless of the F.O.B. point or other conditions of the sale. [,]

(2) Gross receipts from services [performed within the state, rentals and royalties from properties situated within the state, royalties from the use of patents or copyrights within the state,] are assignable to this

state if the market for services is in this state. The taxpayer's market for the services is in this state if and to the extent the service is used at a location in this state.

(3) Gross receipts from the rental, lease or license of real or tangible personal property are assignable to this state to the extent such property is situated within the state.

(4) Gross receipts from the rental, lease or license of intangible property are assignable to this state if and to the extent the property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.

(5) Gross receipts from interest managed or controlled within the state **[**, net gains from the sale or other disposition of intangible assets managed or controlled within the state, net gains from the sale or other disposition of tangible assets situated within the state and all other receipts earned within the state**]** are assignable to this state.

(6) Gross receipts from the sale or other disposition of real property, tangible personal property or intangible property are excluded from the calculation of the apportionment fraction if such property is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(7) Gross receipts, other than those receipts described in subdivisions (1) to (6), inclusive, of this subsection, are assignable to this state to the extent the taxpayer's market for the sales is in this state.

(8) If a taxpayer concludes that it cannot reasonably determine the assignment of its receipts in accordance with subdivisions (1) to (7), inclusive, of this subsection, such taxpayer may petition the commissioner for approval to use a methodology that reasonably approximates the assignment of such receipts provided for in this subsection. Any such petition shall be submitted not later than sixty days prior to the due date of the return for the first income year to

which the petition applies, determined with regard to any extension of time for filing such return. The commissioner shall grant or deny such petition before such due date.

Sec. 3. Subsection (b) of section 12-222 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage and applicable to income years commencing on or after January 1, 2016*):

(b) Such return shall be due on or before the first day of the month next succeeding the due date of the company's corresponding federal income tax return for the income year, determined without regard to any extension of time for filing, or, in the case of any company that is not required to file a federal income tax return for the income year, on or before the first day of the **[**fourth**]** fifth month next succeeding the end of the income year.

Sec. 4. Subdivision (12) of subsection (a) of section 12-407 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(12) "Retailer" includes: (A) Every person engaged in the business of making sales at retail or in the business of making retail sales at auction of tangible personal property owned by the person or others; (B) every person engaged in the business of making sales for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by the person or others for storage, use or other consumption; (C) every operator, as defined in subdivision (18) of this subsection; (D) every seller rendering any service described in subdivision (2) of this subsection; (E) every person under whom any salesman, representative, peddler or canvasser operates in this state, or from whom such salesman, representative, peddler or canvasser obtains the tangible personal property that is sold; (F) every person with whose assistance any seller is enabled to solicit orders within this state; (G) every person making retail sales from outside this state to a destination within this state and not maintaining a place of business in this state who engages in regular or

systematic solicitation of sales of tangible personal property in this state (i) by the display of advertisements on billboards or other outdoor advertising in this state, (ii) by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or (iii) by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided such person has made one hundred or more retail sales from outside this state to destinations within this state during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which such person's liability for tax under this chapter is determined; (H) any person owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged; (I) any person owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which such person so owned or controlled is engaged; (J) any assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person which is subject to taxation under this chapter is situated within this state and such assignee has a security interest, as defined in subdivision (35) of subsection (b) of section 42a-1-201, in such property; (K) every person making retail sales of items of tangible personal property from outside this state to a destination within this state and not maintaining a place of business in this state who repairs or services such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary; **[**and**]** (L) every person making sales of tangible personal property or services through an agreement with another person located in this state under which such person located in this state, for a commission or other consideration that is based upon the sale of tangible personal property or services by the retailer, directly or indirectly refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer, provided the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all such persons with this type of an agreement with the retailer, is in excess of two thousand dollars during the preceding four quarterly periods ending on the last day of March, June, September and December; and (M) every person who has a substantial economic presence within this state, evidenced by a purposeful direction of business toward this state, examined in light of the frequency, quantity and systematic nature of the retailer's economic contacts with this state, without regard to physical presence, and to the extent permitted under the Constitution of the United States.

Sec. 5. Subparagraph (A) of subdivision (15) of subsection (a) of section 12-407 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2016*):

(15) (A) "Engaged in business in the state" means and includes but shall not be limited to the following acts or methods of transacting business: (i) Selling in this state, or any activity in this state in connection with selling in this state, tangible personal property for use, storage or consumption within the state; (ii) engaging in the transfer for a consideration of the occupancy of any room or rooms in a hotel or lodging house for a period of thirty consecutive calendar days or less; (iii) rendering in this state any service described in any of the subparagraphs of subdivision (2) of this subsection; (iv) maintaining, occupying or using, permanently or temporarily, directly or indirectly, through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage point or other place of business or having any representative, agent, salesman, canvasser or solicitor operating in this state for the purpose of selling, delivering or taking orders; (v) notwithstanding the fact that retail sales are made from outside this state to a destination within this state and that a place of business is not maintained in this state, engaging in regular or systematic solicitation of sales of tangible personal property in this state by the display of advertisements on

billboards or other outdoor advertising in this state, by the distribution of catalogs, periodicals, advertising flyers or other advertising by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave or other communication system, for the purpose of effecting retail sales of tangible personal property, provided one hundred or more retail sales from outside this state to destinations within this state are made during the twelve-month period ended on the September thirtieth immediately preceding the monthly or quarterly period with respect to which liability for tax under this chapter is determined; (vi) being owned or controlled, either directly or indirectly, by a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (vii) being owned or controlled, either directly or indirectly, by the same interests that own or control, either directly or indirectly, a retailer engaged in business in this state which is the same as or similar to the line of business in which the retailer so owned or controlled is engaged; (viii) being the assignee of a person engaged in the business of leasing tangible personal property to others, where leased property of such person is situated within this state and such assignee has a security interest, as defined in subdivision (35) of subsection (b) of section 42a-1-201, in such property; (ix) notwithstanding the fact that retail sales of items of tangible personal property are made from outside this state to a destination within this state and that a place of business is not maintained in this state, repairing or servicing such items, under a warranty, in this state, either directly or indirectly through an agent, independent contractor or subsidiary; **[**and**]** (x) selling tangible personal property or services through an agreement with a person located in this state, under which such person located in this state, for a commission or other consideration that is based upon the sale of tangible personal property or services by the retailer, directly or indirectly refers potential customers, whether by a link on an Internet web site or otherwise, to the retailer, provided the cumulative gross receipts from sales by the retailer to customers in the state who are referred to the retailer by all such persons with this type of agreement with the retailer is in excess of two thousand dollars during the four preceding four quarterly periods ending on the last day of March, June, September and December; and (xi) having a substantial economic presence within this state, evidenced by a purposeful direction of business toward this state, examined in light of the frequency, quantity and systematic nature of the retailer's economic contacts with this state, without regard to physical presence, and to the extent permitted under the Constitution of the United States.

Sec. 6. Subsection (c) of section 12-711 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2017, and applicable to income years commencing on or after January 1, 2017*):

(c) (1) If a business, trade, profession or occupation is carried on partly within and partly without this state, as determined under rules or regulations of the commissioner, the items of income, gain, loss and deduction derived from or connected with sources within this state shall be determined by apportionment under such rules or regulations and the provisions of this subsection.

(2) The proportion of the net amount of the items of income, gain, loss and deduction attributable to the activities of the business, trade, profession or occupation carried on in this state shall be determined by multiplying the net amount of the items of income, gain, loss and deduction of the business, trade, profession or occupation by the [average of the percentages of property, payroll and gross income in this state] gross income percentage. The gross income percentage shall be computed by dividing the gross receipts from sales [of property or services] earned within this state by the total gross receipts from sales, [of property or services,] whether earned within or without this state. For the purposes of this subdivision:

(A) Gross receipts from sales of tangible personal property are considered to be earned within this state when the property is delivered or shipped to a purchaser within this state, regardless of the

F.O.B. point or other conditions of the sale.

(B) Gross receipts from sales of services are considered to be earned within this state [when the services are performed by an employee, agent, agency or independent contractor chiefly situated at, connected by contract or otherwise, with or sent out from, offices or branches of the business, trade, profession or occupation or other agencies or locations situated within this state.] if the market for the services is in this state. The taxpayer's market for services is in this state if and to the extent the service is used at a location in this state.

(C) Gross receipts from the rental, lease or license of tangible personal property are considered to be earned within this state if and to the extent such property is situated in this state.

(D) Gross receipts from the rental, lease or license of intangible property are considered to be earned within this state if and to the extent such property is used in this state. Intangible property utilized in marketing a good or service to a consumer is used in this state if that good or service is purchased by a consumer in this state.

(E) Gross receipts from the sale or other disposition of tangible personal property or intangible property are excluded from the gross income percentage if such property is not held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

(F) Gross receipts from the sale, rental, lease or license of real property are excluded from the gross income percentage.

(G) Gross receipts, other than those receipts described in subparagraphs (A) to (F), inclusive, of this subdivision, are considered to be earned within this state to the extent the taxpayer's market for the sales is in this state.

(H) If a taxpayer concludes that it cannot reasonably determine where its gross receipts are earned in accordance with subparagraphs (A) to (G), inclusive, of this subdivision, such taxpayer may petition the commissioner for approval to use a methodology that reasonably approximates the method for determining where such receipts are earned provided for in this subdivision. Any such petition shall be submitted not later than sixty days prior to the due date of the return for the first taxable year to which the petition applies, determined with regard to any extension of time for filing such return. The commissioner shall grant or deny such petition before such due date.

Sec. 7. Subsection (a) of section 12-712 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2017, and applicable to income years commencing on or after January 1, 2017*):

(a) (1) The portion of a nonresident partner's distributive share of partnership income that is derived from or connected with sources within this state shall be determined **[**pursuant to regulations adopted by the commissioner, which regulations shall be consistent**]** in accordance with the provisions of section 12-711, as amended by this act.

(2) The portion of a nonresident shareholder's pro rata share of S corporation income that is derived from or connected with sources within this state shall be determined **[**pursuant to regulations adopted by the commissioner, which regulations shall be consistent**]** in accordance with the provisions of section 12-711, as amended by this act.

(3) The portion of a nonresident beneficiary's share of trust or estate income that is derived from or connected with sources within this state shall be determined **[**under regulations adopted by the commissioner, which regulations shall be consistent**]** in accordance with the provisions of section 12-711, as amended by this act.

This act shall take effect as follows and shall amend the following sections:

Section 1	*from passage and applicable to income years commencing on or after January 1, 2016*	12-213(a)(28)(A)
Sec. 2	*from passage and applicable to income years commencing on or after January 1, 2016*	12-218(b)
Sec. 3	*from passage and applicable to income years commencing on or after January 1, 2016*	12-222(b)
Sec. 4	*October 1, 2016*	12-407(a)(12)
Sec. 5	*October 1, 2016*	12-407(a)(15)(A)
Sec. 6	*January 1, 2017, and applicable to income years commencing on or after January 1, 2017*	12-711(c)
Sec. 7	*January 1, 2017, and applicable to income years commencing on or after January 1, 2017*	12-712(a)

FIN *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 17 $	FY 18 $
Revenue Serv., Dept.	GF - Revenue Gain	Less than 1.0 million	Less than 1.0 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes a number of technical and substantive changes to tax collection policies and procedures which are anticipated to result in a revenue gain of less than $1.0 million annually in aggregate beginning in FY 17. Details on those changes are outlined below:

Sections 1 and 3 make technical and conforming changes that do not result in any fiscal impact.

Sections 2, 6 and 7 establish market-based sourcing rules under the corporate and personal income taxes, and extend single sales factor apportionment to the personal income tax. This is anticipated to result in a net revenue gain to the state through an increase to the taxable base.

Sections 4 and 5 establish "economic nexus" as the basis for determining whether an out-of-state retailer is subject to the state's sales tax. This may result in a revenue gain to the extent that out-of-state retailers would be categorized as "retailers" subject to the sales and use tax. The exact number of out-of-state retailers impacted is unknown, and therefore the actual revenue gain is unknown.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis
sSB 448

AN ACT CONCERNING STATE TAX POLICY.

SUMMARY:

This bill makes several changes to the state's corporation income, personal income, and sales tax laws. It requires companies to use market-based sourcing to determine which service sales are attributable to Connecticut for corporation and personal income tax purposes. Under market-based sourcing rules, companies source service sales based on where their customers are located or receive the benefit of the services. Current law requires them to source service sales based on where the services are performed (i.e., origination-based sourcing).

The bill also:

1. requires multistate companies to determine the percentage of their gains and losses attributable to Connecticut for personal income tax purposes based on their Connecticut sales, rather than the average of property, payroll, and sales in the state;

2. expands the definition of retailer to include all persons with a "substantial economic presence" in Connecticut, thus requiring all such persons, regardless of whether they have a physical presence in the state, to collect and remit sales tax from their customers;

3. modifies the definition of a captive real estate investment trust (REIT) for corporation income tax purposes; and

4. extends, by one month, the due date for filing state corporation income tax returns for companies that do not have to file a

federal return.

EFFECTIVE DATE: Upon passage and applicable to income years beginning on or after January 1, 2016, except the (1) economic nexus provisions are effective October 1, 2016 and (2) personal income tax provisions are effective January 1, 2017 and applicable to income years beginning on or after that date.

§§ 2 & 6 — MARKET-BASED SOURCING FOR CORPORATION AND PERSONAL INCOME TAX PURPOSES

By law, multistate companies must determine where their sales are made in order to calculate the portion of their income that is attributed to Connecticut and thus subject to corporation or personal income tax. Current law establishes "sourcing rules" that companies must use to determine which sales are sourced (i.e., assigned) to Connecticut. The bill changes these rules by requiring companies to use market-based sourcing instead of origination-based sourcing to determine how gross receipts from sales of services and other sources are assigned to Connecticut. It generally applies the same sourcing rules to the corporation and personal income tax, with the exception of sourcing receipts derived from real property sales, rentals, leases, and licenses.

By law, unchanged by the bill, companies must use destination-based sourcing to determine how sales of tangible personal property are sourced to Connecticut for both corporation and personal income tax purposes. Under these rules, sales are sourced to the state if the property is delivered or shipped to a purchaser here.

Corporation Income Tax Sourcing Rules

The bill requires corporation income taxpayers to use market-based sourcing to assign gross receipts from service sales to the state (i.e., source such receipts to Connecticut if the market for the services is here). Under the bill, the market for a service is in Connecticut if and to the extent the service is used here. Current law requires companies to source service sales to Connecticut if the services are performed here.

The bill also assigns gross receipts from the following sources to Connecticut:

1. Real or tangible personal property rentals, leases, or licenses are assignable to Connecticut to the extent the property is located here. Under current law, rentals and royalties from properties located in Connecticut are assignable to the state.

2. Intangible property rentals, leases, or licenses are assignable to Connecticut if and to the extent the property is used here. Under the bill, intangible property used to market a good or service to a consumer is used in Connecticut if the good or service is purchased by a consumer in the state. Under current law, royalties from the use of patents or copyrights within the state are assignable to Connecticut.

3. Interest managed or controlled in Connecticut is assignable to the state, as it is under current law.

4. Other sources not specified under the bill or existing law are assignable to Connecticut to the extent the market for the sales is here. Current law specifies that all other receipts earned in Connecticut are sourced here.

The bill excludes gross receipts from the sale or disposition of real property, tangible personal property, or intangible property from a corporation's apportionment fraction (i.e., the ratio corporations use to determine the portion of their income attributable to Connecticut and thus subject to taxation) if the property is not held by the taxpayer primarily for sale to customers in the ordinary course of business. Under current law, net gains from the sale or disposition of intangible assets managed or controlled in Connecticut and tangible assets situated in Connecticut are sourced here and thus included in a corporation's apportionment fraction.

Personal Income Tax Sourcing Rules

The bill similarly requires personal income taxpayers to use market-based sourcing to determine which gross receipts from service sales are earned in Connecticut (i.e., source such receipts to the state if the market for the services is here). Under the bill, the market for a service is in Connecticut if and to the extent the service is used here. Current law requires taxpayers to source service sales to the state if they are performed by an employee, agent, agency, or independent contractor chiefly situated at, contracted with, or sent from the taxpayer's Connecticut offices or branches.

The bill also assigns gross receipts from the following sources to Connecticut for personal income tax purposes:

1. Tangible personal property rentals, leases, or licenses are considered earned in Connecticut to the extent the property is located here. Under current regulations, rental income from tangible personal property in Connecticut or any interest in it is attributed to Connecticut (Conn. Agencies Reg. § 12-711(b)-3).

2. Intangible property rentals, leases, or licenses are considered earned in Connecticut if and to the extent the property is used here. Intangible property used to market a good or service to a consumer is used in Connecticut if the good or service is purchased by a consumer in the state.

3. Other sources not specified under the bill or existing law are considered earned in Connecticut to the extent the market for the sales is here.

The bill excludes from a company's gross income percentage (see §§ 6 & 7 below) receipts from real property sales, rentals, leases, or licenses. Under existing regulations, income from, and deductions connected with, real property rentals and sales are not subject to apportionment. Rather, such income or deductions are considered to be derived from or connected with Connecticut if the property is located here (Conn. Agencies Reg. § 12-711(b)-8).

The bill also excludes, from the gross income percentage, receipts from the sale or disposition of tangible personal property or intangible property if the property is not held by the taxpayer primarily for sale to customers in the ordinary course of business.

Alternative Sourcing Methodology

Under the bill, if a corporate or personal income taxpayer concludes that it cannot reasonably assign its receipts using the sourcing rules established under existing law and the bill, it may petition the Department of Revenue Services (DRS) commissioner to use an alternate methodology that reasonably approximates these sourcing rules. The taxpayer must submit such a petition no earlier than 60 days before its tax return is due for the first income year to which the petition applies, including any filing deadline extensions. The DRS commissioner must grant or deny the petition before the return is due.

§§ 6 & 7 — SINGLE SALES APPORTIONMENT FOR PERSONAL INCOME TAX PURPOSES

By law, multistate businesses operating in Connecticut must determine how much of their gains and losses is attributable to Connecticut for personal income tax purposes. Current law requires businesses to calculate this proportion by multiplying their net income by the average of the percentage of property, payroll, and gross sales in Connecticut. The bill removes the property and payroll percentage from this calculation. As under existing law, businesses must calculate the gross income percentage by dividing their gross receipts in Connecticut by all of their gross receipts.

The bill requires that the portion of a nonresident partner's, shareholder's, or beneficiary's share of income derived from or connected with sources in the state be determined according to these statutory apportionment provisions, rather than DRS regulations consistent with them.

§§ 4 & 5 — SALES TAX NEXUS

State law generally requires anyone "engaged in the business" of making retail sales in the state (i.e., retailers) to collect and remit sales tax. The bill expands the definition of retailer to include all persons with a "substantial economic presence" in Connecticut. Thus, it requires all such persons, regardless of whether they have a physical presence in the state, to collect and remit the tax from their customers (see BACKGROUND).

Under the bill, a retailer has a "substantial economic presence" in Connecticut if it purposefully directs business towards the state, determined by such measures as the frequency, quantity, and systematic nature of its economic contact with the state, to the extent allowed by the U.S. Constitution.

§ 1 — CAPTIVE REITS HELD BY LIFE INSURANCE COMPANIES IN SEGREGATED ASSET ACCOUNTS

By law, "captive REITs" (real estate investment trusts) are not entitled to a deduction for dividends paid in calculating their net income for Connecticut corporation tax purposes. A "captive REIT" is generally one that, among other things, has more than 50% of its voting power, beneficial interests, or shares directly or constructively owned or controlled by a single-entity corporation. For purposes of determining whether a REIT is a captive REIT, the bill excludes any voting power, beneficial interests, or shares in a REIT held by a life insurance company in a segregated asset account.

§ 3 — CORPORATION INCOME TAX RETURNS

The bill extends, by one month, the due date for filing state corporation income tax returns for companies that do not have to file a federal return. It extends the due date from the first day of the fourth month after the end of the company's income year to the first day of the fifth month for the same year. As under existing law, companies filing federal returns must file their state returns on or before the first day of the month after the due date of their federal returns for the income year, excluding extensions.

BACKGROUND

U. S. Supreme Court Decisions

The U.S. Supreme Court has ruled that a state may require a company engaged in interstate commerce to collect taxes on its behalf if the tax is "applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the state" (*Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977)).

The Court has ruled that a company does not have the required nexus if it has no physical presence in a state and its only connection with it is to solicit business there through catalogs, flyers, advertisements in national publications, or phone calls and to fulfill orders by delivering merchandise to customers by mail or common carrier (*Quill Corp v. North Dakota*, 504 U.S. 298 (1992); *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967)).

REITs

A REIT pools resources from investors to make real estate investments. Under federal law, REITs may deduct dividends distributed to investors when determining their taxable income if they meet certain criteria.

COMMITTEE ACTION

Finance, Revenue and Bonding Committee

Joint Favorable Substitute
Yea 28 Nay 22 (04/07/2016)